

SENATE BILL REPORT

SB 6488

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, February 6, 2020
Ways & Means, February 11, 2020

Title: An act relating to aerial herbicides in forestlands.

Brief Description: Concerning aerial herbicides in forestlands.

Sponsors: Senators Rolfes, Saldaña and Van De Wege.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/28/20, 2/06/20 [DPS-WM, DNP, w/oRec].
Ways & Means: 2/10/20, 2/11/20 [DPS (AWNPN), DNP, w/oRec].

Brief Summary of First Substitute Bill

- Implements recommendations from the Aerial Herbicides in Forestlands Work Group including using best management practices, improving communications, and addressing administrative and regulatory issues.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 6488 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; McCoy and Rolfes.

Minority Report: Do not pass.

Signed by Senators Honeyford and Short.

Minority Report: That it be referred without recommendation.

Signed by Senator Warnick, Ranking Member.

Staff: Jeff Olsen (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Pedersen and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Muzzall, Schoesler, Wagoner, Warnick and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senator Rivers.

Staff: Jed Herman (786-7346)

Background: Legislation enacted in 2019, established a work group on the aerial application of herbicides in forestlands (Work Group). Members of the Work Group include state legislators, state and local governments, private timber managers, pesticide applicators, tribes, and environmental organizations. The Work Group held several meetings across the state to review existing best management practices for aerial application of herbicides on state and private forestlands. In December 2019, the Work Group submitted a report to the Legislature containing recommendations for best management practices, improved communications, and next steps to address administrative and regulatory issues.

The Forest Practices Act establishes four classes of forest practices based on the potential for a proposed operation to adversely affect public resources. The Forest Practices Board (Board) establishes standards for forest practices such as timber harvest, pre-commercial thinning, road construction, fertilization, and forest chemical application. The Department of Natural Resources (DNR) processes and reviews applications and administers the forest practices program within the rules of the Board. The Forest Practices Board Manual (Board Manual) is an advisory technical supplement to the Washington State forest practices rule and *Forest Practices Illustrated* is a book designed by DNR to help forest owners, loggers, and others better understand Washington State's forest practices rules.

Summary of Bill (First Substitute): DNR must evaluate and conduct trials of nonchemical vegetation management strategies in a manner that does not disadvantage the trust beneficiaries. The Board must develop interpretive guidance to clarify adjacent property buffer rules, including provisions for the Board Manual that explain the buffer rules for the protection of private property. The Board must also update the Board Manual to include best management practices and technical guidance consistent with current forest practices rules including equipment, weather conditions, communicating best management practices to neighbors, signage, and information about alternatives to herbicides. The Board Manual updates must be completed by November 1, 2021.

DNR must improve the herbicide application signage information included in the Board Manual and *Forest Practices Illustrated* document to reflect improvements to the legally required posting. DNR must require that emergency contact information be included on the signage.

DNR must integrate evaluation of forest practices aerial applications of herbicide into the 2021-2023 biennial forest practices compliance monitoring sampling. DNR must work with the departments of Agriculture, Labor and Industries, Health, and Ecology, as well as local health jurisdictions and the state poison center, and consult with nongovernmental stakeholders to evaluate pesticide investigation rules and processes. By November 1, 2021, the Work Group must report to the Legislature with any recommended changes, including how complaints should be reported and ensuring that complaints are properly referred.

The Board must include herbicide applications into the biennial forest practices rules revisions regarding compliance monitoring sampling.

By October 31, 2020, the Department of Agriculture and DNR must provide recommendations to the Legislature on the categorical exemptions and other thresholds relating to analysis under forest practices permit applications that include the aerial application of herbicides, including any recommendations for statutory or administrative revisions to the thresholds.

DNR must develop a proposal to be submitted for inclusion in the 2021-2022 omnibus operating budget to replace or upgrade the exiting forest practices application review system. DNR must also provide a readily available link on their website for access to the electronic forms.

EFFECT OF CHANGES MADE BY AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE (First Substitute):

- Adds that non-chemical research and management strategies will be conducted in a manner that will not disadvantage trust beneficiaries.
- Specifies that the DNR must update changes regarding aerial application of herbicides in the Forest Practices Board Manual by no later than November 1, 2021.
- Clarifies that the DNR must integrate evaluation of forest practices aerial applications into the 2021-23 biennial forest practices compliance monitoring sampling.
- Adds that the DNR must make the forms for electronic filing of forest practices applications available through electronic access on DNR's website.
- Adds additional stakeholders to the work group evaluating pesticide investigation rules and processes.
- Modifies dates for reporting back to the Legislature and makes other technical and clarifying changes.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Original Bill (Agriculture, Water, Natural Resources & Parks): *The committee recommended a different version of the bill than what was heard.* PRO: The bill is based on recommendations from the work group that met during the interim, except for the SEPA recommendation. The work group was very productive, even with a wide a variety of stakeholders. Addressing noncompliance investigations to enhance public trust is significant. If non-compliance is not investigated, it leads to distrust. There can be a lapse of time when investigating complaints, and there needs to be timely investigations. It is important that the study group continues, and stakeholders should include tribes and environmental groups. Guidelines need to be updated and clarified to protect watersheds. DNR supports the bill with technical suggestions that have been provided.

OTHER: The work group was productive and members learned a lot from the process. The work group did not get to the SEPA recommendations. There has been SEPA work done in the past, and it would be preferable to not address SEPA issues in the bill. The Department of Agriculture supports the bill with technical suggestions that have been provided. There might be other ways to address the investigation process. There has been previous coordination efforts among state agencies that might be useful to consider. We may want to reconsider having two work groups making suggestions to ensure that recommendations fit together.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Senator Christine Rolfes, Prime Sponsor; Tom DeBor, Kitsap Environmental Coalition; Margaret Tufft, Kitsap Environmental Coalition; Stephen Bernath, DNR; Alec Brown, Washington Environmental Council; Dana Coggon, Kitsap Noxious Weed Control.

OTHER: Heather Hansen, Washington Friends of Farms and Forests; Jason Callahan, Washington Forest Protection Association; Kelly McLain, Washington State Department of Agriculture.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): OTHER: We are seven-eighths in support. Section 6 has some issues that the work group did not have a chance to get to concerning SEPA.

Persons Testifying (Ways & Means): OTHER: Jason Callahan, Washington Forest Protection Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.